

# TIGARD MUNICIPAL CODE

## **Chapter 15.16 ENCROACHMENT PERMITS.**

### **Sections:**

- 15.16.010 Encroachments Within Unimproved Public Rights Of Way, Easements And Public Property.**
  - 15.16.020 Exemptions.**
  - 15.16.030 Permit Issuance.**
  - 15.16.040 Appeals.**
  - 15.16.060 Recording Of Permits.**
  - 15.16.070 Revocation Of Permits.**
  - 15.16.080 Removal Of Encroachment.**
  - 15.16.090 Liability.**
  - 15.16.100 Enforcement.**
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- 15.16.010 Encroachments Within Unimproved Public Rights Of Way, Easements And Public Property.**

### **1. Permits Required for Encroachment in Unimproved Public Rights of Way, Easements and Public Property; Exceptions.**

a. Except as provided in subsection (b) of this section, it shall be unlawful for any person to erect or cause to be erected any structure or to place or maintain any vegetation and/or landscaping materials in, over or upon any dedicated unimproved public right of way, easement or public property without having first obtained a revocable permit from the City Manager or designee authorizing such action. Encroachment into improved public right of way is only allowed if specifically authorized by the City pursuant to TMC Chapter 15.04.

b. The person in control of any encroachment of a structure, vegetation and/or landscaping materials in, over or upon any dedicated unimproved public right of way, easement or public property existing on December

7, 1999 shall apply for an encroachment permit pursuant to this chapter no later than March 6, 2000. No action charging a violation of subsection (a) of this section may be initiated for an encroachment existing on December 7, 1999 before March 6, 2000 or while a timely filed application for an encroachment permit is under consideration by the City.

### **2. Application and Fee Required.**

a. Any person desiring to locate or maintain an encroachment within any unimproved public right of way, easement or public property shall submit an application to the City Manager or designee. The application shall include a description of the proposed encroachment; a scale drawing illustrating the nature and extent of the proposed encroachment and its relationship to adjoining properties. If the applicant is not the owner of the property that will be benefitted by the encroachment, the owner of that property shall also sign the application as a co-applicant. The City Manager or designee may require an actual survey to determine the exact location of any public or private improvements or significant vegetation.

b. The application shall be accompanied by a petition indicating the extent of support for the proposed encroachment by owners/occupants of property within 200 linear feet in each direction from the boundary of the proposed encroachment, and the names and mailing addresses of all property owners within that 200 foot area.

c. A fee in the amount established by resolution of the City Council shall be paid at the time of the application.

### **3. Review of Application.**

a. The City Manager or designee shall conduct a review of the application for an encroachment permit to determine its compliance

# TIGARD MUNICIPAL CODE

with the standards in TMC 15.16.050 and shall request comments from affected City departments regarding the impact of the proposed encroachment.

## **15.16.020 Exemptions.**

1. Certain encroachments are exempt from the permit requirement of TMC 15.16.010. Exempt encroachments are those which would have a minor impact on the present or planned use of the unimproved public right of way, easement or public property and those which are expressly permitted by Code. Except as provided by subsection 2 of this section, exempt encroachments are:

a. Mailboxes and their enclosing structures.

b. Temporary signs and banners permitted by the Sign Code.

c. Guard/handrails along edges of driveway approaches, walks, stairs, etc. encroaching in unimproved public right of way.

d. Lawns, plants and approved street trees encroaching in unimproved public right of way that do not obstruct visibility for pedestrians, bicyclists and motorists.

2. The encroachments described in subsection 1 of this section shall not be exempt if they create a line of sight traffic hazard (TMC Chapter 18.795).

## **15.16.030 Permit Issuance.**

The City Manager or designee may approve, modify and approve or deny the application for an encroachment permit. Notice of the decision shall be sent to the applicant and owners/occupants of property within 200 linear feet in any direction of the boundary of the proposed encroachment.

## **15.16.040 Appeals.**

1. An applicant or affected owner/occupant of property within 200 linear feet of the boundary of the proposed encroachment may appeal the decision of the City Manager or designee to the City Council.

2. An appeal must be filed with the City Recorder within 15 days of the date of the decision stating the basis for the appeal and shall be accompanied by a fee in an amount established by resolution of the City Council.

3. The City Council shall conduct a public hearing on the appeal providing the appellant and any other affected party a reasonable opportunity to be heard on the question of why the decision of the City Manager or designee should be reversed or modified. Notice of the public hearing shall be sent to the applicant, appellant, and owners/occupants of property within 200 linear feet of the boundary of the proposed encroachment. At the conclusion of the public hearing the City Council shall make a final determination in the matter, applying the standards contained in section 15.16.050.

## **15.16.050 Standards And Conditions.**

The City Manager or designee may approve the issuance of a permit for encroachment within the unimproved public right of way, easement or public property where compliance with the following standards can be demonstrated or specific findings are made that the standard is not applicable. The City Manager or designee may attach any conditions to the issuance of the permit that are reasonably related to ensuring compliance with this section, other applicable City codes and ordinances, and to protect the public interest.

1. Standards for Approval.

a. A minimum of three (3) feet of

# TIGARD MUNICIPAL CODE

clearance shall be maintained on all sides of fire hydrants.

b. Clearances to water meters shall be one (1) foot behind and two (2) feet from the sides measured from the outside edges of the box. The applicant shall pay for meter relocation if this standard cannot be met.

c. Clearances from manholes and underground pipelines such as City sewer lines, water lines, and storm drain lines shall be a minimum of 7 feet.

d. Clearances between underground utilities such as power, telephone, cable TV and natural landscape materials, or structures placed over those facilities shall be the distance required by the affected utilities. Conditions requested by the utility providers shall be considered for inclusion into the permit.

e. Proposed encroachments shall not prevent access to, cover, or block the flow of water to or into catch basins, ditches, or swales, and shall not otherwise alter the natural drainage patterns in a manner that adversely affects other property. Where drainage is involved, the City Manager or his designee may set specific requirements.

f. Where the adjacent right of way has been fully improved to its planned dimension with associated curbs, sidewalks, utilities and street trees, an encroachment may be permitted between the property line and the back edge of sidewalk provided there is a one (1) foot minimum clearance between the proposed encroachment and the back edge of the sidewalk and all other standards have been met.

g. Sufficient room for off-street parking and pedestrian travel shall be maintained and the encroachment shall not result in a loss of area needed for parking, vehicular maneuvering, or

pedestrian travel.

h. It is determined that the requested encroachment is consistent with the current use of the unimproved public right of way, easement or public property.

## 2. Conditions.

a. When the City Manager or designee determines that allowing the requested encroachment may subject the City to potential liability, a condition of permit issuance shall be the filing with the City Recorder of a policy of insurance and form of policy by an insurance company licensed to do business in the State of Oregon. The policy shall protect the City, its officers, agents, and employees, and the abutting property owners, lessees and tenants from any and all claims for injury or damage to persons or property that might result from the placing and/or maintenance of the permitted encroachment. The amount of the insurance policy shall be at least the limits of public body liability under the Oregon Tort Claims Act. The policy shall also contain a provision that the City Recorder shall be notified at least 10 days prior to any cancellation of such insurance. The permittee shall maintain the insurance for the term of the permit issued. Failure to maintain the insurance shall result in automatic revocation of the permit.

b. The City Manager or designee may place a limit on the time the proposed encroachment may be located in or on the unimproved right of way, easement or public property.

c. To ensure that unimproved right of way, easement, or public property encroachments do not contribute to visual blight or create a safety hazard, conditions of permit approval may include a requirement that the encroachment be appropriately maintained.

# TIGARD MUNICIPAL CODE

d. The City may impose a charge for the use of the unimproved public right of way, easement or public property.

## **15.16.060 Recording Of Permits.**

1. Approved encroachment permits shall be recorded against the title of the benefitting property and the costs of such recording shall be paid by the applicant.

## **15.16.070 Revocation Of Permits.**

All unimproved right of way, easement or public property encroachment permits shall be revocable by the City at any time such revocation would be in the public interest. No grant of any permit, expenditure of money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of an encroachment or to any damages or claims against the City arising from a revocation.

Any permit issued under this section shall be automatically revoked if the permittee fails to begin installation of the allowed encroachment within sixty (60) days after issuance of the permit unless an extension is requested prior to the expiration of the sixty (60) day period, or fails to comply with any conditions of the permit.

## **15.16.080 Removal Of Encroachment.**

Upon revocation, the permittee or any successor permittee, shall at the permittee's own cost remove the permitted encroachment within thirty (30) days after written notice has been provided by the City unless a shorter period is specified in the notice of revocation.

If the permittee does not remove the encroachment and return the unimproved right of way, easement or public property area to a condition satisfactory to the City Manager or designee, the City shall do so and the permittee

shall be personally liable to the City for any and all costs of returning the right of way, easement or public property to a satisfactory condition, including the removal of structures and reconstruction of streets and/or pathways which costs shall be imposed as a lien upon the property on the City Lien Docket.

## **15.16.090 Liability.**

The permittee, and owner of the benefitted property if different than the permittee, shall be liable to any person who is injured or otherwise suffers damage by reason of any encroachment allowed in accordance with the provisions of this section. Furthermore, the permittee shall be liable to the City of Tigard, its officers, agents and employees, for any judgement or expense incurred or paid by the City, its officers, agents and employees, by reason of the existence of an approved unimproved right of way, easement or public property encroachment.

## **15.16.100 Enforcement.**

1. Installation or maintenance of an encroachment in violation of TMC 15.16.010, or failure to obtain an encroachment permit as required by TMC 15.16.010, or to comply with the terms and conditions of an encroachment permit issued thereunder is hereby declared a civil infraction subject to enforcement pursuant to TMC Chapter 1.16.

2. Installation or maintenance of an encroachment in violation of TMC 15.16.010, or an encroachment permit issued pursuant to TMC 15.16.010 is hereby declared to be a public nuisance as defined by TMC Chapter 7.40, which may be abated pursuant to TMC Chapter 1.16. (Ord. 99-31) ■